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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
GVS TEXAS HOLDINGS I, LLC, <i>et al.</i> ,	§	Case No. 21-31121-MVL
	§	
Debtors.	§	Jointly Administered

**ESS-GV HOLDINGS, LLC’S REQUEST TO CLARIFY FINAL ORDER
AUTHORIZING THE USE OF CASH COLLATERAL**

ESS-GV Holdings, LLC (“ESS”) hereby files its *Request to Clarify Final Order Authorizing the Use of Cash Collateral*, and states as follows:

1. ESS is the holder of the Mezz 1 Loan, as defined and explained in the Debtors’ *Emergency Motion of the Debtors for Entry of Interim and final Orders Authorizing the Use of Cash Collateral and Granting Related Relief* [DE 19] (“Motion”). See Motion at 11-12. Its borrower is a Debtor in these cases, GVS Portfolio I, LLC, which owns 100% of the membership interest in each of the PropCos.¹ *Id.*, fn. 7. As acknowledged in the Motion, “[a]s security for the Mezz 1 Loan, GVS Portfolio I, LLC granted the Original Lender a security interest in (a) its membership interest in each of the PropCos, including any proceeds therefrom; and (b) all amounts on deposit in the Mezzanine Deposit Account or Mezzanine Excess Cash Flow Account.” *Id.* at 12.

¹ PropCos is defined in the Motion, fn. 4.

2. Under the *Interim Order Authorizing the Use of Cash Collateral and Granting Related Relief* (“Interim Cash Collateral Order”), the Senior Lender was granted Adequate Protection Liens on “any and all tangible and intangible pre- and post-petition property of the Debtors, whether existing before, on, or after the Petition Date, together with any proceeds thereof ... and the proceeds, products, rents and profits of the foregoing.” See ¶ 5(a). “Debtors” is defined in the Interim Cash Collateral Order to include “PropCos”. See *id.*, fn. 1.

3. ESS does not believe it is the intent of the Interim Cash Collateral Order (or the Final Cash Collateral Order, which it has not seen) to grant the Senior Lender Adequate Protection Liens on ESS’s collateral; *i.e.*, the membership interest in each of the PropCos.² But the language granting the Adequate Protection Liens is too broad in this regard. ESS requests that any Final Cash Collateral Order be clarified to expressly exclude the membership interest in each of the PropCos from the Senior Lender’s Adequate Protection Liens. This can be accomplished by the following amendment to the last sentence of Paragraph 5(a) – emphasized below – of the Final Cash Collateral Order (assuming Paragraph 5(a) mirrors the Interim Cash Collateral Order):

Notwithstanding the foregoing, the Adequate Protection Liens shall not attach to the proceeds of claims or causes of action arising under Sections 502(d), 544, 545, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code (collectively, the “Avoidance Actions”) **or to the membership interests or stock of any Debtor or any subsidiary or parent of any Debtor.**

4. This clarification will not prejudice the Senior Lender’s interests or its Adequate Protection Liens, and preserves ESS’s interests in its collateral, as it is entitled to do under the Intercreditor Agreement with the Senior Lender.³

² ESS has reached out to Senior Lender to clarify the scope of the Adequate Protection Liens and is awaiting a reply.

³ Section 11(d)(iii) of the Intercreditor Agreement permits ESS to “preserve and realize upon” its interest “in any Separate Collateral pledged to” ESS in a “Proceeding by or against Borrower.” “Separate Collateral” is defined to

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ATTORNEYS FOR ESS-GV HOLDINGS, LLC

include, among other things, “the Equity Collateral securing such Junior Loan.” And “Equity Collateral” is defined as “the equity interests in Borrower or any Junior Borrower pledged pursuant to any of the Junior Loan Documents.”

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of July, 2021, he caused a true and correct copy of the foregoing document to be served electronically on the parties listed below and on the parties requesting electronic service through the Court's ECF system.

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COUNSEL FOR WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE BENEFIT OF THE REGISTERED HOLDERS OF UBS COMMERCIAL MORTGAGE TRUST 2019-C16 COMMERCIAL MORTGAGE PASSTHROUGH CERTIFICATES, SERIES 2019-C16 IN ITS CAPACITY AS A-2-1 NOTEHOLDER AND LEAD SECURITIZATION NOTEHOLDER ON BEHALF OF THE RELATED COMPANION NOTEHOLDERS WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE BENEFIT OF THE REGISTERED HOLDERS OF UBS COMMERCIAL MORTGAGE TRUST 2018-C15 COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2018-C15 AND WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE BENEFIT OF WELLS FARGO COMMERCIAL MORTGAGE TRUST 2019-C50 COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2019-C50, BY AND THROUGH MIDLAND LOAN SERVICES, A DIVISION OF PNC BANK, N.A. AS SPECIAL SERVICER FOR THE LEAD SECURITIZATION NOTEHOLDER

/s/ Kevin M. Lippman

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